

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SP-02 USIA-15 AID-05 EB-08 NSC-05
CIEP-02 TRSE-00 SS-15 STR-04 OMB-01 CEA-01 L-03 PA-02
PRS-01 CIAE-00 INR-07 NSAE-00 COME-00 FRB-01 XMB-04
/087 W

-----181352 094489 /53

R 172000Z FEB 77
FM AMEMBASSY BUENOS AIRES
TO SECSTATE WASHDC 9171

UNCLAS BUENOS AIRES 1329

E.O. 11652: N/A
TAGS: EFIN, EINU, AR
SUBJECT: ARGENTINA: NEW BANKING LAW

REF: BUENOS AIRES 0503

1. SUMMARY: ON FEBRUARY 15, THE GOA PROMULGATED A COMPRE-
HENSIVE BANKING LAW (LAW21,526) PROVIDING A NEW LEGAL
STRUCTURE FOR THE ENTIRE BANKING SYSTEM. THE LAW DEFINES
THE POWERS OF THE CENTRAL BANK AND THE FUNCTIONS AND RE-
QUIREMENTS OF THE VARYING TYPES OF FINANCIAL INSTITUTIONS
(INCLUDING COMMERCIAL, INVESTMENT, SAVINGS AND LOAN, AND
MORTGAGE BANKS; FINANCE COMPANIES; AND CREDIT UNIONS);
RESTRICTS FOREIGN INVESTMENT IN THE BANKING SECTOR TO
COMMERCIAL AND INVESTMENT BANKS; STIPULATES THAT FOREIGN
INVESTMENT IN FINANCIAL ENTITIES ARE SUBJECT TO THE SAME
GENERAL PROVISIONS OF THE FOREIGN INVESTMENT LAW,
WITH THE EXCEPTION THAT A FOREIGN BANK IS DEFINED AS ONE
HAVING 30 PERCENT OR MORE FOREIGN OWNERSHIP OR WHICH IS
EFFECTIVELY CONTROLLED BY FOREIGNERS; INSURANCE DEPOSITS
AGAINST LOSSES WITHOUT CHARGE TO THE FINANCIAL INSTITU-
TIONS; ELIMINATES CONSUMER CREDIT INSTITUTIONS BUT
GIVES THEM ONE YEAR TO CONVERT THEMSELVES INTO CREDIT
UNIONS OR FINANCE COMPANIES; AND TAKES AWAY FROM CREDIT
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UNIONS THE RIGHT TO RECEIVE DEMAND DEPOSITS BUT ALLOWS
THEM ONE YEAR TO ADJUST TO THE NEW PROVISION. SOME OF
THE PRINCIPAL ARTICLES OF THE NEW LAW ARE SUMMARIZED
BELOW:

2. ARTICLES 11 AND 12: A FOREIGN LOCAL FINANCIAL
ENTITY IS ONE WHICH IS 30 PERCENT OR MORE FOREIGN-OWNED

OR ONE WHICH IS EFFECTIVELY CONTROLLED BY FOREIGNERS. A NATIONAL LOCAL FINANCIAL ENTITY IS ONE WHICH IS NOT A FOREIGN LOCAL FINANCIAL ENTITY.

3. ARTICLE 13: FOREIGN INVESTMENT IS ONLY PERMITTED IN COMMERCIAL AND INVESTMENT BANKS AND MUST BE ABLE TO PROMOTE FOREIGN FINANCIAL AND COMMERCIAL RELATIONS. IN ADDITION, THEY MAY ONLY BE ESTABLISHED ON THE BASIS OF RECIPROCAL TREATMENT FROM THE COUNTRY OF ORIGIN AND MUST BE APPROVED BY THE NATIONAL EXECUTIVE POWER. BRANCHES OF FOREIGN ENTITIES ALREADY ESTABLISHED IN THE COUNTRY AND THE NEW ONES AUTHORIZED MUST PERMANENTLY KEEP THE CAPITAL IN THE COMPANY CORRESPONDING TO ARTICLE 32 (MINIMUM CAPITAL REQUIRED FOR FINANCIAL INSTITUTION) AND WILL REMAIN SUBJECT TO ARGENTINE LAWS AND COURTS. THE ACTIVITY IN THE COUNTRY OF REPRESENTATIVES OF FOREIGN FINANCIAL ENTITIES MUST BE AUTHORIZED BEFORE HAND BY THE CENTRAL BANK.

ARTICLE 14: ALL INCREASED CAPITALIZATION OF FINANCIAL ENTITIES, EXCEPT THAT COMING FROM THE DISTRIBUTION OF PROFITS, AND INVESTMENTS IN NEW ENTITIES BY FOREIGNERS OR FOREIGN LOCAL FIRMS, REQUIRED THE PRIOR AUTHORIZATION OF THE CENTRAL BANK AND SUBSEQUENT APPROVAL BY THE NATIONAL EXECUTIVE POWER.

4. A) ARTICLE 16: NATIONAL FINANCIAL ENTITIES CAN OPEN BRANCHES THROUGHOUT THE NATIONAL TERRITORY PROVIDED THAT THEY ADVISE THE CENTRAL BANK AT LEAST THREE MONTHS BEFOREHAND. DURING THIS PERIOD, THE CENTRAL BANK

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MUST MAKE ITS OPPOSITION KNOWN IF THE REQUIREMENTS (FOR A NEW BRANCH) ARE NOT MET.

B) FOREIGN LOCAL FINANCIAL ENTITIES DESIRING TO OPEN NEW LOCAL BRANCHES MUST MEET THE SAME REQUIREMENTS AS THE LOCAL NATIONAL ENTITIES AND, IN ADDITION, REQUEST PRIOR AUTHORIZATION FROM THE CENTRAL BANK AND FULFILL THE CONDITIONS OUTLINED IN ARTICLE 13 REGARDING RECIPROCITY AND FOREIGN FINANCIAL AND COMMERCIAL RELATIONS.

5. ARTICLE 17: THE CENTRAL BANK MUST GIVE IT PRIOR APPROVAL BEFORE ANY BRANCHES OR TYPES OF REPRESENTATION CAN BE ESTABLISHED ABROAD.

6. ARTICLE 28: THE FINANCIAL ENTITIES ENCOMPASSED BY THE LAW CAN NOT:

- A) EXPLOIT FOR THEIR OWN ACCOUNT, COMMERCIAL, INDUSTRIAL, AGRICULTURAL, OR ANY OTHER KIND OF COMPANY;
- B) PLACE LIENS ON THEIR ASSETS WITHOUT PRIOR AUTHORIZATION OF THE CENTRAL BANK;

C) ACCEPT AS COLLATERAL THEIR OWN SHARES;
D) DEAL WITH THEIR DIRECTORS OR MANAGERS OR WITH
COMPANIES OR PERSONS LINKED TO THEM IN CONDITIONS MORE
FAVORABLE THAN THAT GRANTED TO THE GENERAL PUBLIC;
E) EXCEPT FOR COMMERCIAL BANKS, ENGAGE IN TRANSFERS OF
FUNDS FROM ONE MARKET TO ANOTHER.

7. ARTICLE 31. THE ENTITIES MUST MEET THE RESERVE
REQUIREMENTS ESTABLISHED IN RELATION TO NATIONAL OR
FOREIGN DEPOSITS AND THEIR FINANCIAL ASSETS.

8. ARTICLE 56: IF ANY ENTITY ENCOMPASSED BY THE LAW
BECOMES BANKRUPT, THE CENTRAL BANK MAY EITHER:
A) ALLOW OTHER ENTITIES IN THE SYSTEM TO TAKE OVER,
EITHER PARTIALLY OR TOTALLY, THE DEPOSITS, OR
B) ADVANCE THE NECESSARY FUNDS TO RETURN THE DEPOSITS.
TO THEIR OWNERS.

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9. ARTICLE 58: CONSUMER CREDIT ASSOCIATIONS MAY
TRANSFORM THEMSELVES OVER A PERIOD OF ONE YEAR INTO
CREDIT UNIONS OR FINANCE COMPANIES IF THEY MEET THE
APPROPRIATE REQUIREMENTS.

10. ARTICLES 60 AND 62: THE CREDIT UNIONS HAVE ONE
YEAR TO ADAPT THEMSELVES TO THE PROVISIONS OF THE
PRESENT LAW (UNDER THE PRESENT LAW THEY CAN NOT ACCEPT
DEMAND DEPOSITS). THEY CAN TRANSFORM THEMSELVES INTO
COMMERCIAL BANKS AND KEEP THEIR COOPERATIVE JURIDICAL
FORM IF THEY MEET THE REQUIREMENTS ESTABLISHED BY THE
CENTRAL BANK.

11. COMMENT: THE INITIAL REACTION TO THE LAW FROM
THE FOREIGN BANKING COMMUNITY IN ARGENTINA HAS BEEN
GUARDED. WHILE THE CENTRAL BANK AND EXECUTIVE POWER
HAVE CONSIDERABLE DISCRETIONARY AUTHORITY AND COULD
IMPLEMENT THE LAW IN A LIBERAL MANNER, THE GENERAL
THRUST OF THE LAW APPEARS TO BE DESIGNED TO MAKE FOREIGN
INVESTMENT IN THE BANKING SECTOR RATHER DIFFICULT.
ADEBA, THE LOCAL BANKING ASSOCIATION, EXPRESSED OUTRAGE
AT THE ORIGINAL DRAFT OF THE LAW AND EVIDENTLY PERSUADED
THE LEGISLATIVE ADVISORY COUNCIL (CAL) TO ADOPT A MORE
RESTRICTIVE DEFINITION OF A FOREIGN BANK THAN THAT IN
THE FOREIGN INVESTMENT LAW.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, BANKS
Control Number: n/a
Copy: SINGLE
Sent Date: 17-Feb-1977 12:00:00 am
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Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
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Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770058-0904
Format: TEL
From: BUENOS AIRES
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1977/newtext/t19770233/aaaabdbv.tel
Line Count: 166
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Litigation History:
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Message ID: 32d1a1c5-c288-dd11-92da-001cc4696bcc
Office: ACTION ARA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 77 BUENOS AIRES 503
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 19-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3300123
Secure: OPEN
Status: NATIVE
Subject: ARGENTINA: NEW BANKING LAW
TAGS: EFIN, EINV, AR
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/32d1a1c5-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009